



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20500
May 7, 1984

LEGISLATIVE LIAISON

84-1885

Chrono.

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM**TO:** Legislative Liaison Officer

Department of Defense
Department of Justice
Department of State
Central Intelligence Agency
Department of Transportation

SUBJECT: Revised OPM draft bill "To amend section 8312 of title 5, United States Code, to provide that an individual may be denied a civil service or military annuity of the United States if convicted of specified types of felonies in connection with employment, and for other purposes."

(See previous Legislative Referral Memoranda of 6/13/83; 12/15/83; 3/8/84.)

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than May 11, 1984. OPM is anxious to submit this proposal to the Congress.

Questions should be referred to Elaine Rideout
(395-6156) or to Hilda Schreiber
the legislative analyst in this office.

(395-4650),

Jeffrey A. Weinberg for
Assistant Director for
Legislative Reference

Enclosures



United States
**Office of
 Personnel Management** Washington, D.C. 20415

In Reply Refer To:

Your Reference:

MAY - 4 1984

The Honorable David A. Stockman
 Director
 Office of Management and Budget
 Washington, D.C. 20530

Attention: Assistant Director
 for Legislative Reference

Dear Mr. Stockman:

In June, 1983, the Office of Personnel Management presented to you for clearance proposed legislation providing for the denial of a Federal Government annuity to anyone convicted of a job-related felony. Thereafter, you forwarded to us comments on the proposal from the Department of State, Central Intelligence Agency, Department of Defense and Department of Justice. Generally, the comments expressed concerns about the inflexibilities of the draft bill's provisions and that their application could hamper plea bargaining in criminal cases. The Central Intelligence Agency (CIA) expressed concern that its retirement system and employee conduct would be subject to review by other agencies.

The Department of Justice has furnished us with a substitute proposed bill which meets many of these agency concerns. CIA and State Department are not covered by the substitute bill, and, with a further revision we have made to the bill, DOD would have jurisdiction only over the military. The Justice Department also recommended that the transmittal of the proposed legislation to the Congress include statements on the intent that this legislation not interfere with plea bargaining and that the rights of innocent third parties will be fully considered in exercising the discretion to deny an annuity. We have included language to this effect in the proposed letters to the Congress.

Accordingly, we strongly urge that our proposal, as amended, be cleared for transmittal to the Congress.

Sincerely,


 Donald J. Devine
 Director



United States
**Office of
 Personnel Management**

Washington, D.C. 20415

In Reply Refer To:

Your Reference:

The Honorable George Bush
 President
 United States Senate
 Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal "To amend section 8312 of title 5, United States Code, to provide that an individual may be denied a civil service or military annuity of the United States if convicted of specified types of felonies in connection with employment, and for other purposes."

The bill would authorize the Office of Personnel Management, with respect to civilian employees, and the Department of Defense, with respect to the military, to deny an annuity to an individual, his survivor or beneficiary, if they find that the individual is convicted of a felony in one of the categories of job-related crimes specified in the bill. The Department of Justice would, by regulation, specify the crimes in each category which could be the basis for such a denial.

We are not unmindful of possible injustices which could occur from strict application of the provisions of this bill, especially in cases of innocent third parties. We would expect to administer this legislation, and we hereby make such a commitment, in a manner which would take full consideration of the rights and equities of innocent third parties in any decision to deny an annuity based on a felony conviction of a Federal employee.

In addition, we are also concerned about possible effects of this legislation on plea bargaining efforts of the Justice Department. Accordingly, we would exercise our discretion under the legislation consistent with the principle that when a guilty plea rests in significant degree on a promise or agreement of the prosecutor, the promise must be fulfilled. In reaching a plea agreement a federal prosecutor may agree to waive the government's right to deny the defendant his annuity under 5 U.S.C. § 8312 and we would support such an agreement.

-2-

We ask that the foregoing intentions with respect to interpretation of this legislation be made a part of its legislative history.

With the foregoing limitations, we do not anticipate that there would be annuity denials in a great number of cases if this legislation were passed. However, its passage would serve several desirable purposes in the national interest. The existence of such a provision would serve as an additional deterrent to commission of crimes by Federal employees. In addition, this legislation would serve notice of the national policy that those who misuse their public office and violate their public trust may be denied the benefits of Federal employment. We accordingly urge its passage.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this legislation to the Congress.

Sincerely,

Donald J. Devine
Director

A BILL

To amend section 8312 of title 5, United States Code, to provide that an individual may be denied a civil service or military annuity of the United States if convicted of specified types of felonies in connection with employment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8312 of title 5, United States Code, is amended by adding at the end thereof the following:

"(d) The Office of Personnel Management, after notice and opportunity for hearing, may deny payment of a civil service retirement annuity provided by this chapter to an individual or his survivor or beneficiary on the basis of the service of the individual which is creditable toward the annuity if the Office of Personnel Management finds that --

"(1) the individual is convicted of any felony described in subsection (f) of this section; and

"(2) the circumstances regarding the commission of the offense and the seriousness of the crime are such that the interests of justice require denial of the annuity.

"(e) The Department of Defense, after notice and opportunity for hearing, may deny payment of retired pay administered by that Department to an individual or his survivor or beneficiary on the basis of the service of the individual which is creditable toward the retired pay if the Department of Defense finds that --

"(1) the individual is convicted of an offense within the purview of a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) on the basis of charges and specifications describing a violation described in subsection (f); and

"(2) the circumstances regarding the commission of the offense and the seriousness of the crime are such that the interests of justice require denial of the retired pay.

-2-

"(f) Subsections (d) and (e) of this section apply to any violation of federal criminal law listed in regulations which may be promulgated under this subsection by the Attorney General and committed after the promulgation of such regulations (or after the addition of a particular offense through an amendment of the regulations so promulgated). The list of violations in regulations shall be limited to any offense (other than an offense described in subsection (b) or (c) of this section) which involves:

"(1) intentional misuse of public office punishable by imprisonment for a term of 3 or more years;

"(2) intentional violence or injury to another person punishable by imprisonment for a term of 5 or more years if committed in connection with the individual's employment;

"(3) intentional damage to or destruction of federal property punishable by imprisonment for a term of 5 or more years if committed in connection with the individual's employment;

"(4) the manufacture, distribution, or dispensing, or the possession with intent to manufacture, distribute, or dispense, a controlled substance, punishable by imprisonment for a term of 3 or more years if committed in connection with the individual's employment; or

"(5) an attempt or conspiracy to commit any of the offenses described in this subsection.

For purposes of this subsection, an individual's conduct is intentional if it is the individual's conscious objective or desire to engage in the conduct.".

Section Analysis of Bill "To amend section 8312 of title 5, United States Code, to provide that an individual may be denied a civil service or military annuity of the United States if convicted of specified types of felonies in connection with employment, and for other purposes."

The bill adds subsections (d), (e), and (f) to section 8312 of title 5, United States Code, which presently provides for denial of United States Government annuities for conviction of certain national security-related offenses.

New subsections (d) and (e) authorize the Office of Personnel Management, for civilian employees, and the Department of Defense, for members of the uniformed services, to deny an annuity to an individual, his survivor or beneficiary, if they find that the individual is convicted of a felony described in new subsection (f) and that the interests of justice require such a denial.

Proposed subsection (f) to section 8312 makes subsections (d) and (e) applicable to any violation of federal criminal law listed in regulations of the Attorney General. The offense must have been committed after promulgation of the regulations or amendment to include the offense involved. The list is to be limited to any offense or attempt or conspiracy to commit the offense which is job-related and involves intentional misuse of public office punishable by imprisonment for 3 years or more; intentional violence or injury to another person with a prison term of 5 or more years; intentional damage to or destruction of federal property, punishable by imprisonment for 5 years or more; and the manufacture, distribution, or dispensing, or the possession with intent to manufacture, distribute or dispense, a controlled substance, where the punishment is 3 or more years imprisonment. "Intentional conduct" is defined as the individual's conscious objective or desire to engage in the conduct.